

Statement of
U.S. Representative Edward J. Markey (D-MA)
Ranking Democrat, House Subcommittee on
Telecommunications and the Internet
Introduction of the Video Consumer Privacy Protection Act of 2003
November 18, 2003

Mr. Speaker, I rise to introduce the Video Programming Consumer Privacy Protection Act of 2003. Mr. Speaker, as our nation's communications networks continue to grow and become ever more sophisticated, more individuals and industries will be using broadband networks at home and work.. As America upgrades its communications infrastructure for the 21st Century, we must make sure that the information superhighway is safe for all its travelers and this is particularly true with respect to personal privacy.

As the co-chair of the Congressional Privacy Caucus, along with Rep. Joe Barton (R-TX), I have been concerned about protecting privacy and closing anachronistic or technology-specific loopholes in consumer privacy protections for a long time.

Mr. Speaker, it is becoming increasingly apparent that, in addition to the protections accorded consumers with respect to information gathered by cable operators, video rental stores, and telecommunications carriers, which are contained in current law, further protections are needed to ensure that consumer privacy rights are retained and respected on the information superhighway by other entities. This includes entities with access to consumer video information, or who are using other technologies to essentially deliver similar services to those covered by current law.

This is especially the case in the video marketplace. Current law contains privacy protections for consumers when they rent video cassettes (as contained in the Video Privacy Protection Act of 1988 (codified at 18 U.S.C. § 2710)) or subscribe to cable or other services from a cable operator, (as contained in the Communications Act of 1934 (47 U.S.C. 551)).

Since the privacy provisions protecting cable subscribers were put in place in 1984, the Direct Broadcast Satellite industry has developed. Today, Echostar and DirecTV, for example, have approximately 20 million subscribers. Although they offer multi-channel video programming across the country in a manner comparable to many cable operators, current legal

privacy protections protect cable subscribers but not satellite subscribers. This makes absolutely no sense when one considers that millions of such satellite subscribers are watching the same programming as the cable subscriber next door. Consumers who switch from cable to satellite service often do not know that the privacy protections the law accords them in one market do not follow them when they switch technologies even though the video services they obtain are similar.

In addition, the provisions of the Video Privacy Protection Act of 1988, which was enacted in the wake of a scandal involving the disclosure of the video rental records of Judge Robert Bork in a newspaper, covers video cassette rentals but not such "rentals" if they are not in cassette form. In other words, if a consumer physically rents a movie from Blockbuster and walks out of the store with a video cassette, there are legal privacy protections governing the unauthorized disclosure of the consumer's rental choice. Yet if the very same movie is delivered online or over-the-air, and not as a video cassette, it is not covered by that statute.

Moreover, the digital video recorder is quickly becoming a popular device in homes around the country. The personal records of video subscriber choices and viewing habits are available to companies such as Tivo and Replay TV. Consumers should certainly be accorded the same privacy protections for subscribing to these services in my view as they receive under the law from cable operators today. Indeed, the information available to such companies may be more detailed and specific about a consumer's viewing habits than that which may be obtained by many cable operators. The total lack of any legal protections in this area is especially troubling given reports that such companies are willing to sell certain, aggregate data about consumer viewing habits to marketers and others. Currently there is no prohibition on the sale or disclosure of more personal television viewing data.

Mr. Speaker, the bill I'm introducing today is very simple and straightforward. It merely takes the provisions of law governing consumer privacy which today apply to cable operators and makes them applicable to satellite providers as well as vendors of other multi-channel video services, including Tivo and Replay TV. This bill provides essential, similar privacy protections for consumers regardless of whether they subscribe to Comcast or Cox cable, Echostar or DirecTV, or whether they also subscribe to Tivo or Replay TV. This will keep our critical consumer privacy laws current with changes in the marketplace and advances in technology.

I look forward to working with my House colleagues, including my colleagues on the Telecommunications and Internet Subcommittee, and fellow members of the Congressional Privacy Caucus, in addressing these issues perhaps in the next session of Congress. I yield back the balance of my time. Thank you.

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